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Implementation of projects financed from the Development Account: eighth progress report

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 56/237, in which the Assembly reiterated its decision to continue to keep the implementation of the Development Account under review. The Advisory Committee on Administrative and Budgetary Questions, in its reports at the fifty-seventh and fifty-eighth sessions of the General Assembly, recommended that the report of the Secretary-General be submitted in the context of the presentation of the proposed programme budget for the biennium concerned.

The present report provides information on the underlying policy framework, reviews the progress made and the results achieved in the implementation of projects funded from the Development Account since the seventh progress report (A/66/84), as well as an update on the management and oversight of the Account.

The Development Account remains an instrumental capacity development funding facility for the United Nations Secretariat in a highly dynamic development environment. Its distinct operational profile offers developing countries the opportunity to access the full range of development knowledge and expertise of the United Nations Secretariat, which helps countries design and implement strategies towards sustainable, equitable and inclusive development (the theme of the ninth tranche of the Development Account). The Account's programming approach encourages a vast range of strongly collaborative partnerships, both across the implementing entities and with national stakeholders. The overall portfolio of the Account has reached 302 projects, with 118 that are in progress (sixth, seventh and eighth tranches) and 46 that are being presented to the General Assembly for its consideration as part of the proposed programme budget for the biennium 2014-2015 (A/68/6 (Sect. 35)).

* A/68/50.

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I. Introduction

1. The purpose of the present report is to inform Member States of the performance of the Development Account. The report is submitted pursuant to General Assembly resolution 56/237, by which the Assembly reiterated its earlier decision to continue to keep the implementation of the Development Account under review and requested the Secretary-General to submit a report on the subject. Subsequently, the Advisory Committee on Administrative and Budgetary Questions recommended that the report of the Secretary-General be submitted in the context of the presentation of the proposed programme budget for the biennium concerned.

2. The General Assembly decided to establish the Development Account in 1997 in its resolution 52/12 B, as a mechanism to fund capacity development projects of the economic and social entities of the United Nations (Department of Economic and Social Affairs, Economic and Social Commission for Latin America and the Caribbean (ECLAC), Economic and Social Commission for Asia and the Pacific (ESCAP), Economic and Social Commission for Western Asia (ESCWA), Economic Commission for Europe (ECE), Economic Commission for Africa (ECA), United Nations Conference on Trade and Development (UNCTAD), United Nations Environment Programme (UNEP), United Nations Human Settlements Programme (UN-Habitat) and United Nations Office on Drugs and Crimes (UNODC)).[1] Projects financed from the Account are aimed at achieving development impact through building the socioeconomic capacity of developing countries through collaboration at the national, subregional, regional and interregional levels. The projects also seek to ensure effective follow-up to the United Nations conferences and summits in the economic and social areas and serve as an operational extension to the normative and analytical work of the implementing entities.

3. The current report provides an update on the performance and management of the Development Account since the issuance of the seventh progress report (A/66/84). Further details on individual projects are available on the website of the Development Account (www.un.org/esa/devaccount), providing information on both general and project-specific achievements, and a repository of all previous progress reports of the Secretary-General submitted to the General Assembly.

4. A summary overview of the nine tranches that comprise the Development Account as at April 2013 is included at annex I to the present report.

II. Current policy context

5. This section provides an overview of the policy framework underlying the Development Account, highlights the continuous relevance of the Account throughout changing policy contexts, and outlines its uniqueness from an operational standpoint and main characteristics of the support it provides to developing countries.

[1] Annex I to the present report (Summary of Development Account tranches as at 30 April 2013), sets out the relevant General Assembly resolutions prescribing the funding and use of the Account. In addition to the resolutions identified in annex I, specific policies and criteria for the use of the Development Account are included in resolutions 54/15 and 56/237.

Relevance of the Development Account in an evolving development environment

6. The development agenda and guidance provided by Member States for the United Nations capacity development activities has continually evolved since the Development Account was created in 1997. The major conferences and summits of the United Nations including, more recently, the World Summit (New York, 2005); the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States (Mauritius, 2005); the twelfth session of the United Nations Conference on Trade and Development (Accra, 2008); the United Nations Summit on the Millennium Development Goals (New York, 2010); the Fourth United Nations Conference on the Least Developed Countries (Istanbul, 2011); and the United Nations Conference on Sustainable Development (Rio de Janeiro, 2012), represent key milestones which govern this evolving environment. Through its resolution 67/226 on the 2012 quadrennial comprehensive policy review, the General Assembly has provided policy guidance on the strategic orientations for capacity development activities and proposed improvements for the United Nations system delivery of capacity development. This includes assigning highest priority to poverty eradication and strengthening national capacities towards its achievement; mainstreaming sustainable development; supporting countries on inclusive, equitable, participatory, transparent and accountable national processes, substantially increasing the focus on gender equality and empowerment of women; and furthering support to South-South and triangular cooperation.

7. The Development Account has been responsive to this dynamic environment, establishing specific themes to guide the programming and implementation of the Account in each tranche (see annex I) and encouraging demand-driven approaches that address beneficiary countries' priorities, drawing from the guidance from intergovernmental processes in the General Assembly and the Economic and Social Council, including through its functional and regional commissions. The ability of the Account to address current priorities and needs of target countries is demonstrated systematically through the outcomes of the projects. In building statistical capacity in South-East Asia, the Department of Economic and Social Affairs, for example, focused on a number of low-income countries whose national statistical systems were suffering from lack of resources and poor coordination among institutes with statistical responsibilities (Project AF (2006-2007) Department of Economic and Social Affairs). The project has been critical in establishing and consolidating a sound network of statisticians who can foster the exchange of experiences in the region over time. Development Account projects are formulated based on specific government requests for support from the implementing entities, with project ideas often being put forth in follow-up to previous Development Account efforts and/or assistance provided through the Regular Programme for Technical Cooperation or extrabudgetary funding. In a number of cases, the projects included in the present report have led to demand for follow-up assistance, such as in the case of the projects on Sub-Saharan National Economic and Social Councils (Project AH (2006-2007) Department of Economic and Social Affairs), trade competitiveness (Project B (2008-2009) ECE), and sustainable resource management (Project AK (2006-2007) UNEP). The ability of the implementing entities to respond to development priorities is facilitated by the Account's unique funding architecture, which is both unearmarked and predictable, as compared to extrabudgetary funding. This allows for funds to be channelled and

efforts to be tailored by the implementing entities to meet the needs of the beneficiary countries.

Unique operational profile of the Development Account

8. The Development Account, together with the Regular Programme for Technical Cooperation, provides funding for the operational activities for development of the economic and social entities of the United Nations. By building capacity on three levels, namely: (a) the individual; (b) the organizational; and (c) the enabling environment, the Development Account becomes a supportive vehicle for advancing the implementation of internationally agreed development goals and the outcomes of the United Nations conferences and summits. While the Regular Programme for Technical Cooperation provides a short-term, flexible response mechanism to assist Member States with urgent issues, the Development Account adopts a medium- to longer-term approach in helping countries to better integrate social, economic and environmental policies and strategies in order to achieve inclusive and sustained economic growth, poverty eradication, and sustainable development. While spanning across a number of regions and thematic clusters (paras. 12-13 below), the Account often adopts a pilot approach to test new ideas that can be scaled up with supplementary funding. These additional funds are received, as projects unfold, from an array of partners (para. 17 below), including the beneficiary countries themselves that recognize the importance of the capacity development efforts and internalize the projects' processes. While policy changes evidently cannot be attributed to the Development Account alone, Governments' buy-in to the outcomes of Development Account's efforts, provide an indication of the catalytic role that the Development Account can have. The Government of the Lao's People Democratic Republic, for example, included the Poverty Economic Initiative principles in the country's Seventh National Socioeconomic Development Plan, following UNEP efforts to mainstream multilateral agreements into national poverty reduction strategies (Project R (2008-2009) UNEP). Likewise, following UN-Habitat's capacity development efforts in localizing the Millennium Development Goals at the urban and municipal levels, 10 municipalities in Cuba formulated policies on economic and social development (Project T (2008-2009) UN-Habitat). In El Salvador, the reviews of the Science Technology and Innovation Policy, supported by UNCTAD, fed into the elaboration of national industrial and innovation policies. In Peru and the Dominican Republic, the reviews contributed to national discussions on Science Technology and Innovation Policy design and management (Project AC (2008-2009) UNCTAD).

Access to development knowledge and partnerships

9. The Development Account provides a mechanism for promoting the exchange and transfer of skills, knowledge and good practices among target countries within and between different geographic regions, and through cooperation with a wide range of partners in the broader development assistance community (para. 14 below). The Account provides a bridge between in-country capacity development actors, on the one hand, and United Nations Secretariat entities, on the other. The latter offer distinctive skills and competencies in a broad range of economic and social issues that are often only marginally dealt with by other development partners at the country level. For target countries, the Development Account provides a vehicle to tap into the normative and analytical expertise of the United Nations Secretariat and receive

ongoing policy support in the economic and social area, particularly in areas where such expertise does not reside in the capacities of the United Nations country teams.

III. Performance of the Development Account: overview, assessment of achievements and results

10. This section provides an overview of the performance of the Development Account — an assessment of 42 projects from sixth tranche (27 projects), sixth tranche A (5 projects) and fifth tranche B (10 projects).[2] Paragraphs 14 to 21 below provide a thematic review of the sixth tranche projects for which final reports and/or external evaluation reports were available at the time of drafting the present report, referred to as the "reviewed projects". Reviewed projects account for approximately two thirds of the sixth tranche projects, with a total of 30 final reports and 26 evaluation reports analysed. All preceding tranches of the Development Account have been reported upon in previous progress reports. Annex II, Update on the status of the sixth, seventh and eighth tranches: implementation rates, includes details on all active projects as at 30 April 2013.

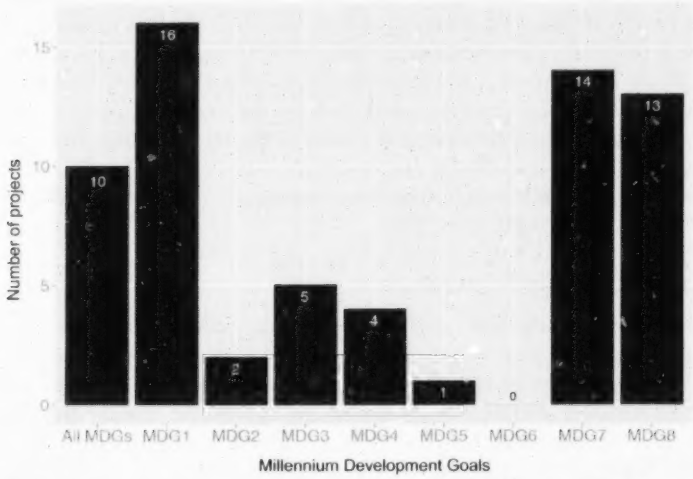
Overall theme for the sixth tranche projects

11. The overall theme guiding the projects under the sixth tranche of the Development Account was the implementation of internationally agreed development goals through innovation, networking and knowledge management. All the projects were formulated around the internationally agreed development goals and assisted countries in pursuing national policies which promote sustainable development. In accordance with the theme, knowledge management, networking and innovation have been important drivers of the projects, and have resulted in projects with innovative knowledge sharing among the stakeholders of a given community of knowledge. A series of networks were, for instance, established to measure the extent of violence against women, resulting in strengthening the work relations between users and producers of data in this field, while supporting progress towards the development of evidence-based public policies against such forms of violence (Project C (2008-2009) ECLAC). Similarly, a United Nations Network of Experts for Paperless Trade in Asia and the Pacific (UNNExT) was established, and has been expanding considerably since, to promote trade competitiveness through single window facilities (Project D (2008-2009) ESCAP). The network of global experts who were pooled together to help Governments assess their National Development Strategies (Project J (2008-2009) Department of Economic and Social Affairs), or the whole range of national collaborations that were sought for the production of biodiversity indicators, including government agencies, non-governmental organizations and academic groups (Project Q (2008-2009) UNEP), are additional examples of the ways in which Development Account projects have embodied the theme of the sixth tranche. The Millennium Development Goals continued to be an important element of Development Account programming, with projects providing support to countries on both measuring progress and developing policies for their achievement. Millennium Development Goal 1, Eradicate extreme poverty and hunger, Millennium Development Goal 7,

[2] Referred to as the sixth tranche. See annex I for an analysis of the tranches of the Development Account.

Ensure environmental sustainability, and Millennium Development Goal 8, Global partnership for development, were the three most frequently addressed Millennium Development Goals (see figure I below), and were the focus of 16, 14 and 13 projects, respectively. Millennium Development Goal 3, Gender equality, was addressed by five projects, followed by Millennium Development Goal 4, Reduce child mortality, which was the focus of four projects.

Figure I
Millennium Development Goals addressed by projects*



* Multiple counting: many projects address several Millennium Development Goals and are therefore counted under each relevant category of Goal.

Geographic spread of the projects

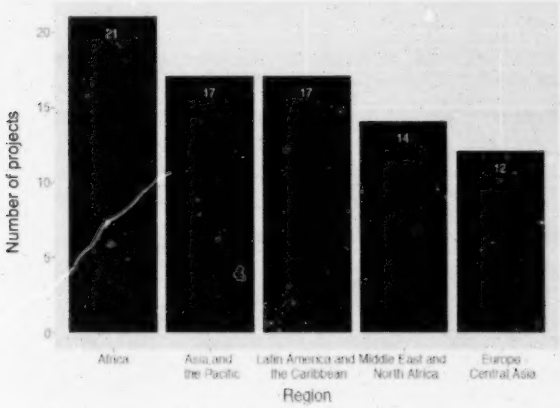
12. Development Account projects support synergies and transfer of knowledge within and between regions and countries all over the world. More than 50 per cent of the sixth tranche projects have adopted an interregional/global scope, including South-South cooperation, while 44 per cent have concentrated efforts in one region or subregion, generally maintaining a multi-country focus (see table 1 below).[3] Efforts were concentrated in Africa (with approximately half of the sixth tranche projects targeting at least one country in this r gion, among others), followed by the Asia and the Pacific and Latin America and the Caribbean regions (each targeting roughly 40 per cent of the total sixth tranche projects, alongside other regions). The Middle East and North Africa was covered by one third of the projects in this tranche, followed closely by Europe-Central Asia (see figure II below). The projects targeted mainly countries with special needs, including post-conflict countries (78 per cent), landlocked developing countries (73 per cent), least developed countries (66 per cent), and small island developing States (41 per cent) (see figure III below).

[3] Projects for the purpose of the present report are classified as "interregional" when activities take place in more than one region; and "global" when activities cover all five regions: Africa, Asia and the Pacific, Europe-Central Asia, Latin America and the Caribbean and Middle East and North Africa.

Table 1
Regional/global scope of projects by entity

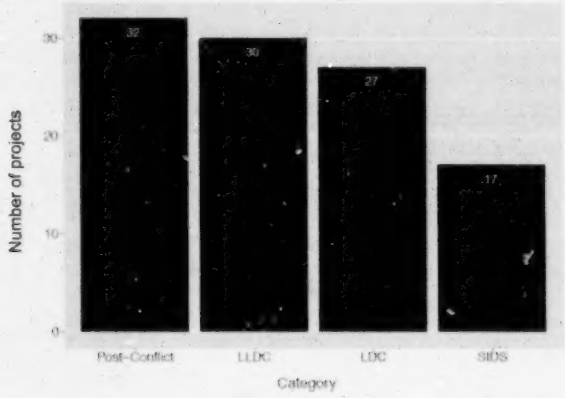
	Regional	*Interregional*	*Global*	*Total*
	Number of projects	*Number of projects*	*Number of projects*	*Number of projects*
Department of Economic and Social Affairs	4	5	1	10
UNCTAD	4	2	1	7
ECLAC	4	1	1	6
ESCAP	2	2	–	4
UNEP	2	1	–	3
UN-Habitat	2	1	–	3
ECA	–	3	–	3
ECE	2	–	1	3
ESCWA	–	2	–	2
UNODC	–	1	–	1
Total	**20**	**18**	**4**	**42**

Figure II
Regions covered by projects*



* Multiple counting: many projects are implemented in several regions and are therefore counted under each relevant category.

Figure III
Types of countries targeted by projects*



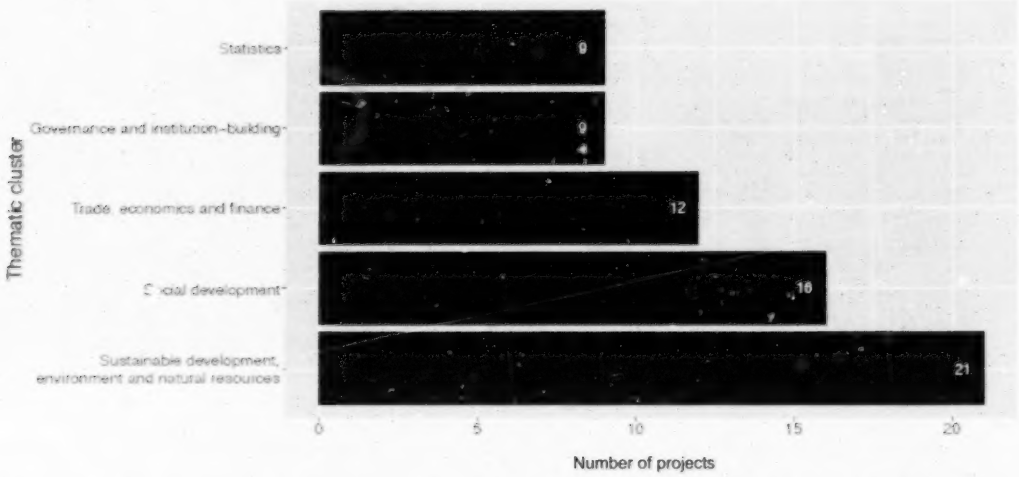
* Multiple counting: many projects are implemented in several types of countries and are therefore counted under each relevant category.

Specific focus of the projects

13. The Development Account capacity-building efforts stretch across an array of different topics and issues which reflect the expertise of the Account's 10 implementing entities, and are guided through the entities' governing bodies, as well as priorities expressed by Member States. The most commonly addressed issues in the sixth tranche were sustainable development, environment and natural resources, representing approximately one half of the projects (see figure IV below). Examples of these projects include building capacities to cope with climate change

(Project AD (2008-2009) UN-Habitat), supporting mechanisms for new and renewable energy projects (Project W (2008-2009) ECA), developing eco-efficient and sustainable urban infrastructure development (Project E (2008-2009) ESCAP) and impacting water quality through integrated water resources management (Project V (2008-2009) ECE). The second most covered theme was social development with 16 projects addressing this area, such as addressing international migration (Project A (2008-2009) ECLAC), eradicating violence against women through local knowledge communities (Project C (2008-2009) ECLAC), and supporting land policy reforms (Project X (2008-2009) ECA). Projects in the field of trade, economics and finance, which included efforts to support the implementation of international standards for commercial agricultural products (Project B (2008-2009) ECE), and strengthening the competitiveness of small and medium-sized enterprises in the tourism sector (Project L (2008-2009) UNCTAD), were also significant in number (12 out of 42 projects). Projects in the field of statistics, such as targeting national statistical offices to measure progress towards the achievement of the Millennium Development Goals (Project Z (2008-2009) ECLAC), followed, with nine projects covering this area, alongside projects related to governance and institution-building, examples of which included localizing Millennium Development Goals at the urban and municipal levels (Project T (2008-2009) UN-Habitat) and participatory human development (Project AA (2008-2009) ESCWA).

Figure IV
Thematic clusters addressed by projects*



* Multiple counting: many projects address several thematic clusters and are therefore counted under each relevant category.

Project partnerships

14. Partnerships are a key feature of the Development Account and all reviewed projects have indicated the presence of one or more key partners in project implementation. Over 70 per cent of the projects were implemented through international and local partnerships (see figure V below), which is illustrative of the emphasis that the Account places on building local expertise. Partnerships among Development Account implementing entities represented the most common form of

collaboration, with 75 per cent of the reviewed projects indicating that they had implemented the project with another Development Account entity, among others. Alongside other agencies and funds that belong to the broader United Nations system (60 per cent), national non-governmental organizations were also significant stakeholders in the projects reviewed, with approximately two thirds of the projects having national non-governmental organizations as one of their partners. International non-governmental organizations were partners in approximately one third of the projects reviewed, followed by the private sector (20 per cent). The Bretton Woods institutions also played a partnership role, albeit smaller (1 per cent), in the projects reviewed (see figure VI below).

Figure V
Local and international partnerships*

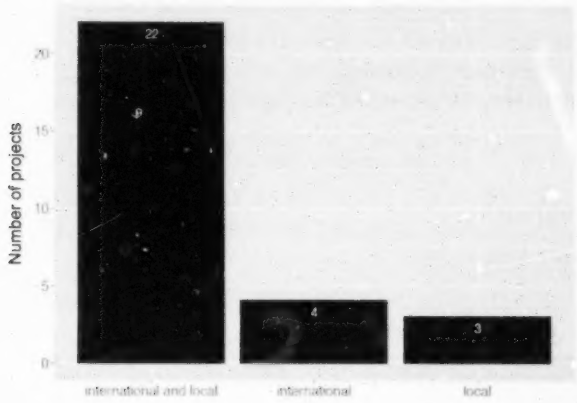
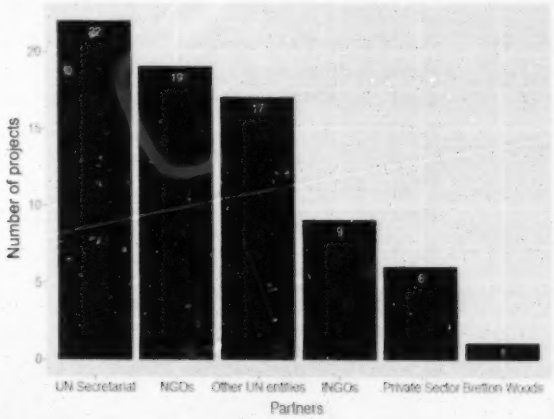


Figure VI
Types of partners in projects*



* Multiple counting: many projects engage with several types of partners and are therefore counted under each relevant category.

15. Collaborative efforts across a wide range of partners are an important means not only of ensuring against duplication of efforts but, equally important, also of allowing for leveraging established expertise, wherever it is available, and for a cross-fertilization of efforts. Sharing experiences across countries and regions is at the very core of the Development Account. The Development Account also encourages South-South cooperation through the use of regional consultants, fellowships, study tours, and cross-regional training, where ministry officials have the opportunity to share experiences and challenges, and to benefit from demonstrated best practices.

Leveraging project funding and initiatives

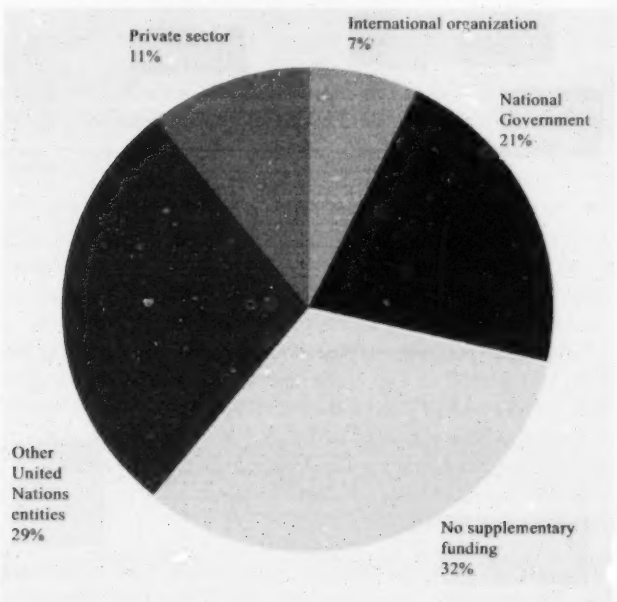
16. The extent to which projects are able to build on partnerships is an important component in their success. Partnerships are significant for leveraging resources available and scaling up the potential impact of projects. For example, projects that start off as a pilot initiative and that are able to attract complementary funds from project partners, can generate additional multiplier effects, leading to scaling-up, follow-up, or expansion of activities to other countries or areas. A project's ability to promote coordination and complementarities with different sources of funds also impacts the sustainability of outcomes, which is often dependent on the ability to secure external support beyond the horizon of the project. For a number of projects,

external funding is a requirement for the continuation of activities to ensure that capacities developed through the project become firmly rooted in national contexts, and spread among practitioners. Along these lines, target countries' willingness to kick-start projects prior to their formal commencement was a key criterion for UNEP's selection of pilot cases for a project on sustainable resource management (Project AK (2006-2007) UNEP).

Supplementary funding

17. The reviewed projects have, overall, been successful in attracting supplementary funding. About two thirds of the projects reviewed indicated that additional assistance had been received (see figure VII below). Supplementary funding originated from an array of sources ranging across international organizations including United Nations entities other than the main Development Account's implementing entities, regional development banks, donor Governments, and in some cases the private sector. Assistance was, moreover, not limited to financial support but was also provided through other means, including facilitating workshop arrangements and providing in-kind contributions for meeting venues, accommodation, personnel time and website resources.

Figure VII
Sources of supplementary funding across projects*



* Multiple counting: many projects feature several sources of supplementary funding and are therefore counted under each relevant category.

18. Development Account's implementing entities have in some cases built momentum through replicating successful outcomes in countries beyond those included in the project's initial plan. Following UNCTAD's support in conducting STIP reviews in Latin America (Project AC (2008-2009) UNCTAD), UNCTAD

received requests for STIP reviews from the Governments of Oman (currently ongoing), Costa Rica and Egypt. In another project, a number of countries that had not been targeted directly by UN-Habitat's capacity-building efforts in coping with climate change in Africa (Project AD (2008-2009) UN-Habitat) embarked on similar activities to promote green building practices and setting up their own national-level Councils.

Supporting sustainability of project results

19. The Development Account's implementing entities often maintain that achieving outcomes that are sustainable in the long run is linked not only to the availability of supplementary funding, but also to the commitment of the beneficiary countries to build on the project's outcomes. Hence, sustainability in the context of the Account's capacity-building efforts also implies a set of endogenous changes at the national level to ensure the stakeholders' ownership of the project outcomes and that these changes are, in turn, internalized in project countries. The Development Account's implementing entities have promoted mechanisms that further sustainability, often acknowledging supplementary financial resources as only a partial component in achieving it. Rather, the political commitment of stakeholders in beneficiary countries is critical for the achievement of sustainable outcomes. UNCTAD has, for instance, emphasized that the promotion of pro-poor, growth-oriented subregional integration in Arab economies is strongly linked to local leadership's ability to influence development policies and, more specifically, to their commitment to utilize trade as an engine of growth (Project N (2008-2009) UNCTAD). Similarly, in strengthening the capacities of countries emerging from conflict to integrate sustainable principles into development strategies, the Department of Economic and Social Affairs highlighted the scenario in Liberia, where priority given to sustainable development in national planning and a political environment conducive to multi-stakeholder collaboration offered opportunities to build on the momentum of the project (Project I (2008-2009) Department of Economic and Social Affairs). Even ECE recognized how political acceptance was crucial in leading the process for improving water and health and bringing it forward in Central-Eastern Europe and the Caucasus (Project AI (2006-2007) ECE). In selecting projects that are developed in response to the demands and needs of the beneficiary countries, the Development Account prioritizes ownership of outcomes, which, in turn, contributes to the likelihood of continuity and follow-up.

20. In addition to the principle of government ownership, the importance of institutional-level change is often highlighted in Development Account projects. The selection of workshop participants is frequently geared towards ensuring that capacity-building is promoted at an institutional rather than at an individual level. The absorptive capacity of participants of training workshops or study visits was highlighted as a key factor in the success of statistical capacity development efforts of the Department of Economic and Social Affairs in South-East Asia (Project AF (2006-2007) Department of Economic and Social Affairs). Along these lines, targeting permanent officers, rather than those on limited appointment, and promoting a training-of-trainers approach, were good practices identified in UN-Habitat and ECLAC capacity development efforts in localizing Millennium Development Goals in Latin America and the Caribbean (Project T (2008-2009) UN-Habitat), and enhancing trade competitiveness (Project D (2008-2009) ESCAP), respectively.

21. Additional mechanisms to ensure active government participation include drawing on national focal points to support the project's activities during implementation. In mainstreaming multilateral environmental agreements into national poverty reduction strategies, UNEP, for example, established a number of focal points within the Ministry of Environment and a national network of experts to provide expertise to the project (Project R (2008-2009) UNEP). In supporting the establishment of a survey system to collect and disseminate data on foreign direct investment flows and activities of transnational corporations, national teams were established by UNCTAD in the project country to lead the annual surveys of foreign direct investment and transnational corporations (Project M (2008-2009) UNCTAD). Public awareness and the involvement of civil society are also often key requirements to promote sustainable project outcomes. ECE, for instance, recognized the need to develop further mechanisms for the involvement of civil society as a key condition for the implementation of the Protocol on Water and Health (Project AI (2006-2007) ECE). ESCWA further highlighted how civil society working together with Governments provides the enabling environment required for determining the most appropriate approach to public policy processes during reform and transition to democracy (Project AA (2008-2009) ESCWA).

IV. Managing the Development Account for results

Office of Internal Oversight Services audit of the Development Account

22. In 2011, the Office of Internal Oversight Services conducted an audit of the Development Account. It accorded a satisfactory rating, its highest rating, to the Account's monitoring and reporting-related processes, which included the timely submission of annual progress and final project reports from the implementing entities, and their review by the Department of Economic and Social Affairs, noting that this process was working effectively. The report resulted in only one accepted recommendation, namely to establish the terms of reference for the various working mechanisms which supported the Account's operation, including the composition, roles and responsibilities of those mechanisms. Prior to the conclusion of the audit and the issuance of the final audit report in December 2012, the Development Account's Programme Manager had already launched the Development Account Task Team on evaluation and initiated a Development Account Governance and Management Architecture proposal. The Office of Internal Oversight Services was kept informed of these processes, and considered this recommendation as fully implemented.

Task Team on Evaluation

23. In July 2012, the Programme Manager established the Task Team on Evaluation to review the current evaluation mechanisms of the Development Account and to provide recommendations geared towards harmonizing the evaluation functions of the Account. The Task Team was chaired by a senior evaluation specialist from ECA, with an ESCWA expert acting as Co-Chair, and included evaluation experts from ECLAC, ESCAP, UN-Habitat, UNCTAD and UNEP. In establishing the Task Team, the Programme Manager was mindful of past recommendations of the Advisory Committee on Administrative and Budgetary Questions which called for continued improvements to the monitoring and evaluation functions of the Account, through

establishing common standards and feedback mechanisms on project reporting and evaluation.[4] The Task Team was requested to undertake four key assignments: (a) mapping the evaluation practices in place across the Development Account's implementing entities; (b) developing recommendations on the ways to strengthen the evaluation process of the Account; (c) developing a set of guidelines related to evaluation in the context of the Account; and (d) developing a final set of recommendations for the strategic way forward of the Account with respect to evaluation.

Activities of the Task Team

24. Members of the Task Team met through videoconferencing and communicated via electronic means, from September 2012 to May 2013, with secretariat support from the Department of Economic and Social Affairs, seeking to deliver one output for each of its tasks. A survey of the evaluation focal points within the implementing entities highlighted the absence of specific evaluation guidance for Development Account projects. Areas which the Task Team felt needed to be addressed included consistency in evaluation processes for Development Account projects across implementing entities, quality assurance of project logical frameworks, incorporation of lessons learned from past evaluations into new project concepts, formalized dissemination of findings through knowledge-sharing platforms and a reasonable budget for evaluation exercises.

25. The preliminary report of the Task Team on how to improve the evaluation function of the Account outlined a set of recommendations for consideration and endorsement by the Development Account Steering Committee,[5] and for subsequent approval by the Programme Manager. The draft recommendations from the preliminary report touched upon a range of issues, including: (a) conducting evaluations on cross-cutting/thematic issues and those projects which were jointly implemented; (b) strengthening monitoring and evaluation requirements in the design of projects; (c) supporting evaluation knowledge and dissemination; and (d) proposing dedicated evaluation capacity for the Development Account. The Task Team also developed evaluation guidelines tailored to assist project managers and evaluation officers in conducting future project evaluations, as well as a proposal that implementing entities provide a management response to the evaluation results and recommendations. The Development Account Evaluation Guidelines and the final report of the Task Team are expected to be submitted to the Development Account Steering Committee at the end of June 2013.

Proposed Development Account Governance and Management Architecture

26. Given the increasing level of complexity of the Account, and the processes involved in ensuring sound project concepts and project documents, a comprehensive proposal on the Development Account Governance and Management Architecture was initiated by the Programme Manager. Overall, the new architecture seeks to

[4] See A/58/7/Add.5, para. 34, and A/66/7, para. XIII.9.

[5] The Steering Committee is composed of five members representing the implementing entities of the Account and other key stakeholders. Current membership includes the Department of Economic and Social Affairs, the regional commissions, UNCTAD and UN-Habitat (representing UNEP and UNODC) and the Office of Programme Planning, Budget and Accounts. The Committee is chaired by the Assistant Secretary-General for Economic and Social Affairs.

strengthen the Account's governance to enhance inclusiveness, transparency and accountability, while ensuring a timely and effective delivery of capacity development projects which benefit Member States. The architecture describes the roles and responsibilities of all parties involved in the management and governance of the Account, bringing the different elements together, clarifying the links and the dependencies. The architecture proposal also defines streamlined procedures for a more efficient and sound quality-review process of projects by defining major steps for the concept note development process, including initiation, selection and quality control. Specific timelines are outlined for the finalization of project documents so as to support smooth approval processes. The architecture proposal also includes distinct terms of reference for the four key mechanisms of the Account such as: (a) the Development Account Steering Committee; (b) the Quality Assurance Group of the Programme Manager; (c) the Task Team on Evaluation; and (d) the Development Account Network. The architecture will be presented to the Steering Committee at the end of June 2013 for review and endorsement, and subsequently to the Programme Manager for approval.

Growth of the Account

27. As shown in annex I to the present report, the Development Account had approved appropriations in the total amount of $152.9 million as of December 2012. Subject to the anticipated approval of the ninth tranche, the Development Account will add 46 new projects totalling $28.4 million in 2014, with an increased total approved amount of $181.3 million across 302 projects. The Account features 118 ongoing projects that require active management support (see annex II). The current priority of the Programme Manager is to expedite the programming processes for the 52 projects under the eighth tranche and the 46 projects under the ninth tranche, launch the Development Account Network, and implement the recommendations of the Task Team on Evaluation, thereby strengthening the evaluation and lessons learned processes.

Programming of projects

28. During the course of 2012, 12 new projects were programmed in accordance with the guidelines established for the eighth tranche of the Account as a result of the additional $5.6 million approved by the General Assembly (in its resolutions 66/246 and 66/248). In addition, based upon requests by implementing entities and in line with General Assembly resolution 56/237, which stated that funds from underperforming projects may be redeployed to deliver better results, the Programme Manager endorsed the reprogramming of the following projects in response to new and emerging demands from beneficiary countries, and to achieve greater impact and results: (a) ECA is redeploying three projects, Project AM (2008-2009), Project C (2010-2011), and Project Y (2012-2013), to focus on strengthening the capacity of African countries to use mobile technologies to collect data for effective policy and decision-making; (b) the Department of Economic and Social Affairs redeployed Project AD (2010-2011) to focus on strengthening national mutual accountability mechanisms in selected sub-Saharan developing countries for more effective and sustainable development cooperation; and (c) UNCTAD redeployed Project I (2012-2013) to focus on strengthening national capacities to manage policies and frameworks on science, technology and innovation in Asian countries.

V. Conclusions and recommendation

29. The Development Account has been able to remain responsive to a highly evolving development environment, through the unearmarked and predictable nature of its funding, a demand-driven approach that reflects beneficiary countries' priorities and a theme-driven programming for each tranche. By functioning as a bridge between the expertise of United Nations Secretariat entities and locally present development actors who often have a significantly different focus, the Account offers countries a distinctive opportunity to access skills and development knowledge to design and implement strategies and policies towards sustainable, equitable and inclusive development. Its operational profile is further reinforced by the adoption of pilot approaches that test new ideas and eventually scale them up through supplementary funding, and the emphasis on integration of national expertise in the projects to ensure national ownership and sustainability of project outcomes.

30. The Account, which has been active for 15 years, has benefited from continuing improvements in its programming cycle with added emphasis on developing a logical framework which defines the immediate results to be attained from the delivery of the project, and the anticipated change in national policies and processes, which are often achieved after the project's lifecycle. The Board of Auditors, in its related report (A/63/5 (Vol. I), para. 89), referred to the Development Account as a programming model for all of the United Nations technical cooperation activities to follow. In managing the Account, the Programme Manager is mindful to ensure that the Account's solid programming principles are not only fully maintained, but continually strengthened.

31. The finalization of the Development Account Governance and Management Architecture, the formalization of which had been recommended by the Office of Internal Oversight Services audit of the Account in 2012, will promote a shared responsibility between the Programme Manager and the implementing entities in the quality assurance process governing the concept notes and project documents. The institution of a quality assurance process at the level of the implementing entity, which includes a deadline for each step of the review process, is expected to expedite the project approval process, thereby contributing to improved rates of implementation, and fewer requests for project extensions.

32. Through the Development Account Network, the Programme Manager will promote a culture of continuous sharing of project concepts, project documents, evaluation reports and lessons learned. The Network will provide a platform for promoting enhanced cooperation across projects where there are synergies and efficiencies to be achieved. The Network will additionally provide a platform for testing new ideas to improve the impact and results of the Account. To support the Network, improvements to the Development Account website will be initiated, with both an external portal for Member States, and an internal portal for sharing of working documents.

33. Looking ahead, the Programme Manager is committed to further strengthening evaluation and pursue the recommendations of the Task Team on Evaluation, with the expectation that evaluation outcomes will factor directly back into the selection of projects and programming cycle. In late 2012 the

Programme Manager was able to strengthen the Account's evaluation function through the recruitment of a dedicated evaluation officer funded through the Junior Professional Officer programme. As this position will cease in 2014, new arrangements will be required to support the Account's evaluation function on a long-term basis at a more senior level. The Development Account also expects to consider, in the context of the next tranche, various options for moving forward with a programmatic approach, to ensure the most effective use of funds and to maximize the impact at the country level. In the face of the evolving global socioeconomic developments, the Secretariat stands ready to continue to provide effective support to the Account for the benefit of developing Member States.

34. **The General Assembly may wish to take note of the present report.**

Annex I

Summary of Development Account tranches as at 30 April 2013

Biennium	*Theme*	*Tranche*	*Approved (thousands of United States dollars)*	*General Assembly resolution*	*Total number of projects*	*Number of active projects*	*Implementation period*	*Status as at 30 April 2013 (percentage)*
1998-1999	Support for the implementation of global conferences	1	13 065.00	53/220 A and B	7	–	–	Closed
2000-2001	Networking and regional and subregional expertise	2	13 065.00	54/249	16	–	–	Closed
2002-2003	Capacity-building for managing globalization	3	13 065.00	56/254 A	20	–	–	Closed
2004-2005	Capacity-building for Millennium Development Goals through partnerships, knowledge-management and taking advantage of information and communications technologies	4	13 065.00	58/270	23	–	–	Closed
2006-2007	Supporting progress towards the internationally agreed development goals, through knowledge-management, networking and partnerships	5	13 065.00	60/247	24	–	–	Closed
		5A	3 415.90	61/252 and 60/246	6	–	–	Closed
		5B	5 071.00	62/235	10	–	–	Closed
2008-2009	Supporting progress towards achieving internationally agreed development goals, through innovation, networking and knowledge-management	6	16 480.90	62/237	27	–	–	Closed
		6A	2 170.40	62/236, 62/237 and 62/238	5	–	–	Closed
		6B	7 500.00	64/242	15	15	2010-2013	28
2010-2011	Support to addressing key global development challenges to further the achievement of internationally agreed development goals, through collaboration at the global, regional and national levels	7	18 651.30	64/243 and 64/244	28	28	2010-2013	55
		7A	4 000.00	Residual balances from tranches 1-4	12	12	2010-2013	54
		7B	5 000.00	64/243 and 64/244	11	11	2010-2013	42
2012-2013	Supporting Member States to accelerate progress towards achieving the internationally agreed development goals, including the Millennium Development Goals, in the context of the multiple and interrelated development challenges	8	23 651.30	66/248	40	40	2012-2015	6
		8A	5 591.90	66/248	12	12	2012-2015	3
Total approved			**152 857.7***		**256**	**118**		
2014-2015	Supporting Member States in designing and implementing strategies and policies towards sustainable, equitable and inclusive development	9	28 398.80	Proposed programme budget for the biennium 2014-2015 (A/68/6 (Sect. 35))	46	–	2014-2017	–
Grand total			**181 256.50***		**302**	**118**		

* Excludes $4,000,000, representing the residual balance from tranches 1 to 4 that were programmed in the context of the seventh tranche.

Annex II

Update on the status of the sixth, seventh and eighth tranches: implementation rates

Table A.1

Projects funded from section 35, Development Account, of the programme budget for the biennium 2008-2009 (sixth tranche-B) as at 30 April 2013

	Project title	*Implementing entity*	*Approved (A)*	*Expenditures (B)*	*Implementation rate (percentage)*
			(Thousands of United States dollars)		*[(B)/(A)]*100*
AG	Strengthening macroeconomics and social policy coherence through integrated micro-macro modelling	DESA	590.0	377.8	64
AH	Building capacity of Governments and NGOs to promote implementation of the Convention on the Rights of Persons with Disabilities in Africa	DESA	474.0	60.6	13
AI	Strengthening capacity of national tax administrations of developing countries in Latin America to reduce tax transaction costs	DESA	526.0	406.2	77
AJ	Supporting finance and planning authorities to formulate and implement macroeconomic policies	DESA	514.0	170.4	33
AK	Retooling global development: strengthening coherence and coordination of development policies	DESA	345.0	82.7	24
AL	Interregional cooperation on the use of data on informal sector and informal employment in national accounts	ECA	800.0	–	–
AM	Capacity-building of government officials in management of public-private partnerships for improved service delivery and infrastructure development in Africa[a]	ECA	550.0	–	–
AN	Building the capacity of countries of the United Nations Special Programme for the Economies of Central Asia to adopt and apply innovative green technologies for climate change adaptation	ECE	548.0	129.3	24
AO	Strengthening the capacity of government officials to adapt to possible scenarios of disasters associated with extreme events: analysis for adaptation and disaster risk reduction policies	ECLAC	302.0	58.6	19
AP	Capacity-building of control authorities and transport operators to improve efficiency of cross-border transport in landlocked and transit developing countries	ESCAP	533.0	345.4	65
AQ	Strengthening South-South Cooperation to increase the affordability of sustainable energy options in Asia and the Pacific	ESCAP	541.0	58.4	11
AR	Strengthening capacities for policy-oriented analysis of key global development challenges at developing country universities	UNCTAD	493.0	166.5	34
AS	Strengthening the capacity of policymakers and business leaders in three biotrade beneficiary countries in integrating REDD+ projects into biotrade strategies	UNCTAD	348.0	6.2	2

	Project title	Implementing entity	Approved (A)	Expenditures (B)	Implementation rate (percentage)
			(Thousands of United States dollars)		[(B)/(A)]*100
AT	Strengthening the capacity of the rural communities in least developed countries to utilize the market access opportunities provided by duty free quota free and enhancing value-added of their traditional products	UNCTAD	496.0	84.5	17
AU	Building statistical capacity to monitor the Millennium Development Goal Slum Target in the context of natural disasters and housing crisis in Africa, Asia, and Latin America and the Caribbean	UN-Habitat	440.0	127.6	29
	Total (sixth tranche-B)		**7 500.0**	**2 074.2**	**28**

Abbreviations: ESCAP, Economic and Social Commission for Asia and the Pacific; ESCWA, Economic and Social Commission for Western Asia; ECE, Economic Commission for Europe; ECLAC, Economic Commission for Latin America and the Caribbean; ECA, Economic Commission for Africa; UNCTAD, United Nations Conference on Trade and Development; UNEP, United Nations Environment Programme; UN-Habitat, United Nations Human Settlements Programme.

[a] Redeployed for a project on strengthening the capacity of African countries to use mobile technologies to collect data for effective policy- and decision-making (see para. 28 of the report).

Table A.2

Projects funded from section 35, Development Account, of the programme budget for the biennium 2010-2011 (seventh tranche) as at 30 April 2013

	Project title	Implementing entity	Approved (A)	Expenditures (B)	Implementation rate (percentage)
			(Thousands of United States dollars)		[(B)/(A)]*100
A	Facilitating effective integration of developing countries in the global economy through aid for trade schemes	ECA	975.3	683.5	70
B	Mainstreaming climate change into agricultural policies for achieving food security and poverty reduction in West Africa	ECA	637.5	–	–
C	Capacity-building for integrated shared water resources management in Southern Africa[b]	ECA	606.8	–	–
D	Mitigating climate change through attracting foreign direct investment in advanced fossil fuel technologies	ECE	629.9	593.9	94
E	Facilitating climate change adaptation in transport through addressing the energy-environment linkage	ECE	738.0	563.1	76
F	Improving quantification of women's unpaid work in support of poverty eradication policies	ECLAC	568.0	433.1	76
G	Improving management of resource allocation for environment in Latin America and the Caribbean	ECLAC	554.5	183.2	33

	Project title	Implementing entity	Approved (A)	Expenditures (B)	Implementation rate (percentage)
			(Thousands of United States dollars)		[(B)/(A)]*100
H	Strengthening national statistical and inter-institutional capacities for monitoring the Millennium Development Goals through interregional cooperation and knowledge-sharing	ECLAC	1 192.0	967.0	81
I	Improving disaster risk preparedness in the Economic and Social Commission for Asia and the Pacific Region	ESCAP	621.9	257.5	41
J	Enhancing energy security and improving access to energy services through development of public-private renewable energy partnerships	ESCAP	1 006.5	863.0	86
K	Strengthening social protection in Asia and the Pacific	ESCAP	749.4	496.6	66
L	Capacity-building on climate change mitigation for poverty alleviation in Western Asia	ESCWA	547.2	177.7	32
M	Strengthening capacities in the Economic and Social Commission for Western Asia region to negotiate bilateral investment treaties	ESCWA	502.2	285.5	57
N	Improving criminal justice responses to trafficking in persons in South-Eastern Europe with special focus on the Republic of Moldova	UNODC	499.6	15.3	3
O	Strengthening capacities in developing countries for the effective enforcement of competition law to minimize constraints to economic productivity	UNCTAD	617.7	444.3	72
P	Addressing the impact and implications of the global financial crisis on developing countries through support to services sector development	UNCTAD	653.0	210.5	32
Q	Enhancing capacities of developing countries to mainstream gender in trade policy	UNCTAD	621.9	363.8	58
R	Strengthening capacity for effective asset and liability management in national debt management offices	UNCTAD	663.4	257.9	39
S	Integration of the trade dimension in the United Nations Development Assistance Framework	UNCTAD	534.8	364.2	68
T	Building the capacity of customs officers to prevent illegal trade in environmentally sensitive commodities through the Green Customs Initiative	UNEP	669.6	620.1	93
U	Capacity-building in national planning for sustainable food production	UNEP	710.0	254.0	36
V	Enhancing the contribution of local authorities and their partners towards achieving the Millennium Development Goals through building the capacity of local government training institutes	UN-Habitat	687.2	477.6	69
W	Strengthening regional knowledge networks to promote the effective implementation of the United Nations development agenda and to assess progress	DESA	526.3	477.3	91
X	Contributing to the achievement of Millennium Development Goals and other internationally agreed development goals in Africa through strengthening public sector human resources management capacities	DESA	695.5	546.6	79
Y	Supporting the establishment of a Latin American Parliamentary Knowledge Network	DESA	407.3	221.9	54

	Project title	Implementing entity	Approved (A)	Expenditures (B)	Implementation rate (percentage)
			(Thousands of United States dollars)		[(B)/(A)]*100
Z	Strengthening national capacities to adapt to climate change through improving management of water variability and other climate-driven changes in Africa	DESA	697.6	–	–
AA	Strengthening national reporting in support of the implementation of the Non-Legally Binding Instrument on All Types of Forests	DESA	527.6	341.7	65
AB	Enhancing key statistics and indicators to monitor progress towards the Millennium Development Goals and other internationally agreed development goals	DESA	810.6	203.6	25
Total (seventh tranche)			**18 651.3**	**10 302.9**	**55**
AC	Strengthening capacity of national policy analysts in the social and economic sectors of developing countries in the production and use of National Transfer Accounts	DESA	306.0	253.3	83
AD	Strengthening the capacity of civil society organizations to promote the implementation of Economic and Social Council resolutions and the United Nations agenda at the country level[c]	DESA	314.0	–	–
AE	Strengthening capacities of African policymakers to mainstream natural disaster risk reduction into national and regional development policies and strategies in Africa	ECA	402.0	16.0	4
AF	Strengthening capacity in mitigating the impact of the financial crisis and sustaining dynamism and inclusive development in Asia and the Pacific	ESCAP	425.0	215.4	51
AG	Strengthening statistical capacity of countries with economies in transition to assess progress in achieving the Millennium Development Goal on environmental sustainability, and provide data on environmental vulnerabilities	ECE	391.0	244.8	63
AH	Improving poverty measurement: building national statistical capacity in Caribbean countries to estimate Purchasing Power Parities	ECLAC	401.0	366.1	91
AI	Strengthening national capacities of policymakers in the region of the Economic and Social Commission for Western Asia to formulate national youth policies and plans of action: responding to the World Programme of Action for Youth (WPAY)	ESCWA	379.0	153.8	41
AJ	Enhancing the capacities of landlocked developing countries to attract foreign direct investment for the development and modernization of productive capacities	UNCTAD	351.0	127.5	36
AK	International cooperation to develop a global monitoring system in national investment policies	UNCTAD	349.0	216.1	62
AL	Strengthening regional and national processes for formulating and implementing sustainable energy strategies that contribute the most to greenhouse gas emission reduction	UNEP	270.0	260.2	96
AM	Strengthening statistical capacity for crime prevention in Asia	UNODC	207.0	99.7	48

	Project title	Implementing entity	Approved (A)	Expenditures (B)	Implementation rate (percentage)
			(Thousands of United States dollars)		[(B)/(A)]*100
AN	Capacity development for cities in Asia and the Pacific to increase resilience to climate change impacts	UN-Habitat	205.0	205.0	100
Total (seventh tranche-A)			**4 000.0**	**2 157.9**	**54**
AO	Strengthening the capacity of developing and transition economies to link to global supply chains through the reduction of trade obstacles	ECE	452.0	224.7	50
AP	Strengthening national capacities of export sectors in Latin America and the Caribbean to meet the challenges of climate change	ECLAC	605.0	345.5	57
AQ	Strengthening government and civil society capacity to incorporate economic and social rights into macroeconomic policy	ECLAC	393.0	106.9	27
AR	Developing a regional financial and monetary architecture in Asia and the Pacific in support of global financial reforms	ESCAP	526.0	2.7	1
AS	Strengthening national capacities in the region of the Economic and Social Commission for Western Asia in developing green production sectors	ESCWA	491.0	260.1	53
AT	Regional project for strengthening statistical capacity for the ESCWA countries in energy statistics and energy balance	ESCWA	509.0	200.1	39
AU	Strengthening capacities of developing countries in Africa and Asia to support their effective participation in negotiating bilateral, regional and multilateral trade facilitation arrangements	UNCTAD	477.0	239.1	50
AV	Enhancing national ownership of trade-related assistance in United Nations country-level development plans	UNCTAD	311.0	154.4	50
AW	Integrating environmental sustainability in the UNDAFs and United Nations common country programming processes	UNEP	500.0	353.8	71
AX	Strengthening national capacities in India and Bangladesh for integration of sustainable building practices in social housing programmes	UNEP	375.0	61.2	16
AY	Promoting rule of law and governance in the criminal justice system in Liberia	UNODC	361.0	133.6	37
Total (seventh tranche-B)			**5 000.0**	**2 082.1**	**42**

Abbreviations: ESCAP, Economic and Social Commission for Asia and the Pacific; ESCWA, Economic and Social Commission for Western Asia; ECE, Economic Commission for Europe; ECLAC, Economic Commission for Latin America and the Caribbean; ECA, Economic Commission for Africa; UNCTAD, United Nations Conference on Trade and Development; UNEP, United Nations Environment Programme; UN-Habitat, United Nations Human Settlements Programme.

[b] Redeployed for a project on strengthening the capacity of African countries to use mobile technologies to collect data for effective policy and decision-making (see para. 28 of the report).

[c] Redeployed for a project on strengthening national mutual accountability mechanisms in selected sub-Saharan developing countries for more effective and sustainable development cooperation (see para. 28 of the report).

Table A.3
Projects funded from section 35, Development Account, of the programme budget for the biennium 2012-2013 (eighth tranche) as at 30 April 2013

	Project title	*Implementing entity*	*Approved (A)*	*Expenditures (B)*	*Implementation rate (percentage)*
			(Thousands of United States dollars)		*[(B)/(A)]*100*
A	Capacity-building for removing constraints in utilizing international support measures for least developed countries	DESA	670.0	15.5	2
B	Strengthening capacities of the public sector in least developed countries to deliver quality services equitably through the transfer and adaptation of innovative practices	DESA	640.3	44.5	7
C	Strengthening national capacities of conflict-affected countries to manage water scarcity and droughts	DESA	570.0	71.6	13
D	Developing country profiles' low carbon technologies for resilient green economies in small island developing States	DESA	650.0	–	–
E	Climate change financing for forests: reducing emissions from deforestation and forest degradation — plus (REDD+) and its impacts on financing for other functions of forests worldwide	DESA	600.0	–	–
F	Fostering private-public partnerships and strengthening national capacities for designing, implementing and evaluating development-oriented macroeconomic policy to generate employment, growth and poverty reduction	DESA	400.0	–	–
G	Measuring the green economy in support of the Development Goals: statistical frameworks, indicators, and instruments	DESA	800.0	–	–
H	Strengthening geospatial information management capacities of Member States in development decision-making	DESA	400.0	59.1	15
I	Supporting small island developing States in their efforts to build economic resilience[d]	UNCTAD	397.0	21.2	5
J	Accelerating progress of selected West African countries towards the achievement of internationally agreed development goals, particularly Millennium Development Goal 8, through trade-related training and capacity-building	UNCTAD	577.0	33.7	6
K	Capacity-building for the formulation and implementation of Millennium Development Goal-oriented trade policies in developing countries contributing to accelerating achievement of Millennium Development Goals in the context of multiple and interrelated development challenges	UNCTAD	694.0	12.7	2
L	Addressing the impact of trade and trade agreements on employment in developing countries	UNCTAD	232.0	28.0	12
M	Strengthening of capacities of trade and planning ministries of selected least developed countries on developing and implementing trade strategies that are conducive to poverty reduction	UNCTAD	641.0	36.3	6

	Project title	Implementing entity	Approved (A)	Expenditures (B)	Implementation rate (percentage)
			(Thousands of United States dollars)		[(B)/(A)]*100
N	Building national capacities for promoting foreign direct investment in green and other growth sectors	UNCTAD	461.0	–	–
O	Promoting sustainable business models for development: investing in the poor, for the poor and with the poor	UNCTAD	462.0	–	–
P	Strengthening macroeconomic management capacities for regional and interregional monetary and financial cooperation in Latin America and the Caribbean and West and Central Africa	UNCTAD	555.0	–	–
Q	Mainstreaming ecosystem service into countries' sectoral and macroeconomic policies and programmes	UNEP	542.0	–	–
R	Integrating environmental sustainability in the United Nations Development Assistance Frameworks and the United Nations common country programming process	UNEP	541.0	–	–
S	Development of a review system for the effective national implementation of Multilateral Environmental Agreements	UNEP	543.0	–	–
T	Strengthening the capacities of the International Conference on the Great Lakes Region (ICGLR) member States to address the land and property issues of internally displaced persons and refugees, with a specific emphasis on women's land and property rights	UN-Habitat	452.0	–	–
U	Strengthening capacity of policymakers in South-East Asia for promoting policies and developing plans for improved wastewater treatment and reuse in urban and peri-urban areas	UN-Habitat	348.0	–	–
V	Enhancing the coordination and support of UNODC involvement in the CCA/UNDAF process in view of the achievement of the Millennium Development Goals	UNODC	650.0	–	–
W	Strengthening the capacity of Civil Registration and Vital Statistics Systems in Member States to produce continuous and reliable indicators for measuring progress on the development agenda	ECA	682.0	–	–
X	Strengthening capacity of African countries to promote the use of renewable energy to achieve sustainable development	ECA	703.0	–	–
Y	Capacity-building for risk and disaster management in Africa[r]	ECA	689.0	–	–
Z	Strengthening capacities for the development of regional agricultural value chains in Africa	ECA	499.0	–	–
AA	Strengthening the capacities of developing countries and countries with economies in transition to facilitate legitimate border crossing, regional cooperation and integration	ECE	750.0	–	–
AB	Promoting energy efficiency investments for climate change mitigation and sustainable development	ECE	1 250.0	871.0	70

	Project title	Implementing entity	Approved (A)	Expenditures (B)	Implementation rate (percentage)
			(Thousands of United States dollars)		[(B)/(A)]*100
AC	Strengthening public policies in Latin America and the Caribbean to promote the international insertion of small and medium-sized enterprises as a vehicle to reduce their productivity gap	ECLAC	575.0	–	–
AD	Towards a low-carbon economy: policy options for energy efficiency and innovation	ECLAC	478.0	141.8	30
AE	Time for equality: strengthening the institutional framework of social policies	ECLAC	661.0	–	–
AF	Strengthening the capacities of selected Latin American and Asian countries to develop and improve training systems and to protect workers against unemployment	ECLAC	754.5	–	–
AG	Strengthening information and communications technology capacities for disaster risk reduction and development: addressing information, knowledge and policy gaps in Asia	ESCAP	600.6	–	–
AH	Strengthening capacities in countries with special needs on designing and implementing economic and social development policies to accelerate progress towards achieving the Millennium Development Goals	ESCAP	643.5	–	–
AI	Interregional cooperation to strengthen national capacities to measure progress in achieving gender equality and women's empowerment	ESCAP	686.4	–	–
AJ	Deepening regional connectivity: strengthening capacities of Asian developing countries to increase intraregional trade by implementing paperless trade and transport facilitation systems	ESCAP	854.0	96.5	11
AK	Institutional and capacity-building project for Arab parliaments and other stakeholders for the implementation of Security Council resolution 1325 (2000) on women, peace and security	ESCWA	510.0	–	–
AL	Academy of ICT Essentials for Government Leaders in the ESCWA Region	ESCWA	509.0	16.0	3
AM	Developing the capacities of the Arab countries for climate change adaptation by applying integrated water resource management tools	ESCWA	517.0	–	–
AN	Strengthening capacities to utilize workers' remittances in financing for development	ESCWA	464.0	–	–
	Total (eighth tranche)		**23 651.3**	**1 447.9**	**6**
AO	Building capacity for E-PARTICIPATION in support of accelerated progress towards the internationally agreed development goals including the Millennium Development Goals	DESA	362.9	–	–
AP	Supporting Governments transiting to low-carbon development — Carrying forward the post-2015 Development Agenda and Rio+20	DESA	380.0	–	–
AQ	Supporting national dialogues on the Post-2015 Development Agenda in the context of the Annual Ministerial Review	DESA	375.0	–	–

	Project title	*Implementing entity*	*Approved (A)*	*Expenditures (B)*	*Implementation rate (percentage)*
			(Thousands of United States dollars)		*[(B)/(A)]*100*
AR	Strengthening capacities of African countries in boosting intra-African trade	UNCTAD	500.0	–	–
AS	Capacity-building for science, technology and innovation policy management in developing countries	UNCTAD	400.0	–	–
AT	Promoting microcatchment planning and replicable low-cost green investment strategies to improve urban drinking water supply in the Democratic Republic of the Congo and Central Africa	UNEP	390.0	–	–
AU	Increase Pacific small island developing States cities' resilience to climate change impacts	UN-Habitat	382.0	178.8	47
AV	Capacity-building on agri-business for women to enhance food security in Eastern Africa	ECA	520.0	–	–
AQ	Sustainable forest management for greener economies in the Caucasus and Central Asia	ECE	500.0	–	–
AX	Strengthening the capacity of national Governments to promote the social inclusion of youth within a context of increasing violence and insecurity, through innovative programmes and evidence-based policies	ECLAC	500.0	–	–
AY	Building capacity and facilitating private sector involvement for infrastructure provision in less developed countries	ESCAP	691.0	–	–
AZ	Building capacities in developing appropriate green technologies for improving the livelihood of rural communities in the ESCWA region	ESCWA	591.0	–	–
	Total (eighth tranche-A)		**5 591.9**	**178.8**	**3**

Abbreviations: ESCAP, Economic and Social Commission for Asia and the Pacific; ESCWA, Economic and Social Commission for Western Asia; ECE, Economic Commission for Europe; ECLAC, Economic Commission for Latin America and the Caribbean; ECA, Economic Commission for Africa; UNCTAD, United Nations Conference on Trade and Development; UNEP, United Nations Environment Programme; UN-Habitat, United Nations Human Settlements Programme.

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Sixty-eighth session
Item 115 (c) of the preliminary list*
Elections to fill vacancies in subsidiary organs and other elections: election of fourteen members of the Human Rights Council

Letter dated 6 June 2013 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the General Assembly

In accordance with the decision of the Government of the former Yugoslav Republic of Macedonia to present its candidature to the Human Rights Council for the term 2014-2016 at the election to be held in 2013, and pursuant to General Assembly resolution 60/251, I have the honour to transmit the attached document containing the voluntary pledges and commitments of the Government of the former Yugoslav Republic of Macedonia with regard to the promotion and protection of human rights (see annex).

I should be grateful if you would circulate the present letter and its annex as an official document of the General Assembly.

(*Signed*) Pajo **Avirovikj**
Ambassador
Permanent Representative

* A/68/50.

13-36208 (E) 270613

Please recycle

Annex to the letter dated 6 June 2013 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the General Assembly

Candidacy of the Republic of Macedonia for the Human Rights Council, 2014-2016

Voluntary commitments and pledges pursuant to General Assembly resolution 60/251

1. The Republic of Macedonia is fully committed to the universal promotion and protection of human rights and fundamental freedoms. As a diverse multicultural society, committed to democracy and the rule of law, Macedonia is devoted to further advancing its national and international policies for the protection and promotion of human rights, both being a national priority and an integral part of our foreign policy. Therefore, the Republic of Macedonia has put forward its candidacy for membership in the Human Rights Council for the period 2014-2016.

2. The Republic of Macedonia strongly supports the integration of human rights in all United Nations policies.

3. The Republic of Macedonia is committed to a robust and effective Human Rights Council and has been a staunch supporter of the Council and its mechanisms since its establishment. The Council must have a leading role in addressing human rights violations and promoting human rights. Its effectiveness and efficiency are of crucial importance for living up to the expectations declared at its creation by the States Members of the United Nations. The Council must respond to human rights violations effectively and in a timely manner. At the same time, its preventive and early warning capacities must be strengthened.

4. The Republic of Macedonia will continue to be actively engaged in the work of the Third Committee of the General Assembly, as a body of the United Nations with universal membership which deals with human rights issues.

5. The Republic of Macedonia supports the strengthening of the treaty body system. It is a party to the core global and regional human rights instruments. The Republic of Macedonia is committed to complying with its international human rights obligations and will continue to report regularly to the treaty monitoring bodies, as well as to distribute for general discussion their conclusions and recommendations.

6. With a view to strengthening the protection of human rights, the Republic of Macedonia pledges to consider signature/ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

7. The Republic of Macedonia will continue to cooperate with and support the subsidiary bodies and mechanisms of the Human Rights Council. Macedonia extended a standing invitation to all special procedures in 2004. It pledges to work

with special procedures mandate holders, to discuss and disseminate their recommendations among the relevant authorities, civil society and the general public.

8. The Republic of Macedonia fully supports the independence of the Office of the United Nations High Commissioner for Human Rights and its valuable role in promoting and protecting human rights, including its work on mainstreaming human rights throughout the work of the United Nations.

9. The Republic of Macedonia remains strongly committed to the universal periodic review mechanism and considers it a crucial achievement of the reform process in that area. The universal periodic review process is a valuable instrument of dialogue on human rights issues and policies on both the national level and in Geneva. Its proper follow-up is expected to ensure meaningful progress in national human rights policies and practice. The Republic of Macedonia was under review in May 2009 and the report of the Working Group on the Universal Periodic Review (A/HRC/12/15 and Add.1 and Add.1/Corr.1) was adopted by the Human Rights Council in September 2009. The universal periodic review resulted in 42 recommendations and the Republic of Macedonia agreed to implement all but one. The mid-term review report was submitted in February 2012 (available from upr-info.org). The Republic of Macedonia will continue to support the smooth functioning of the universal periodic review process and will ensure an effective follow-up to the recommendations of the universal periodic review.

10. The Republic of Macedonia pledges to promote the realization of all human rights — civil, political, economic, social and cultural — on the basis of international human rights law and the understanding of the strong interdependence between development, peace and security and human rights. The Republic of Macedonia remains committed to promoting multilateralism as an effective tool in the defence of human rights.

11. The Republic of Macedonia pledges to support initiatives at the regional and international levels to combat religious, ethnic, national or linguistic intolerance and assure adequate protection for all minorities, as well as initiatives to foster interreligious and intercultural dialogue — as it has demonstrated by hosting global and regional forums on dialogue among civilization, cultures and religions.

12. The Republic of Macedonia is fully aware of the importance to further promote cooperation between government and civil society by ensuring the inclusion of a strong, free and independent civil society voice in efforts to improve human rights at the national and international levels.

13. With a view to strengthening the protection of human rights at the national level, the Republic of Macedonia further commits to the following:

(a) Implementation of the judiciary reforms aimed at ensuring a functional and efficient justice system for the exercise of human rights;

(b) Further implementation of the Ohrid Framework Agreement and the strategic priorities arising thereof;

(c) Implementation of the Roma Strategy and Action Plans, in compliance with the Strategy and the Decade of Roma Inclusion 2005-2015;

(d) Advancement of the rights of women and girls;

(e) Implementation of laws and policies to prevent and combat violence against women and girls in all its forms, including domestic violence;

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(g) Advancement of the rights of persons with disabilities;

(h) Stepping up of efforts to mitigate the effects of the economic policies on the vulnerable groups;

(i) Continuous harmonization of the national legislation with the international human rights standards;

(j) Publication of national reports, as well as reports and conclusions of the international human rights bodies, at the website of the Ministry of Foreign Affairs (mfa.gov.mk), and strengthening further the mechanisms for the discussion and implementation of the recommendations;

(k) Upholding the independence of our national human rights institutions, including the Ombudsman and the National Commission for Protection against Discrimination, in line with the Paris Principles.

14. Recognizing the importance of integration of the human rights-based approach into its policy and governance, in 2012 the Government of the Republic of Macedonia established a high-level intersectoral human rights commission headed by the Minister for Foreign Affairs.

15. Emphasizing the importance of the international protection of human rights, the Republic of Macedonia hereby further commits to the following:

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United Nations A/68/93*

General Assembly

Distr.: General
12 June 2013

Original: English

Sixty-eighth session
Item 115 (c) of the preliminary list**
Elections to fill vacancies in subsidiary organs and other elections: election of fourteen members of the Human Rights Council

Letter dated 6 June 2013 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the General Assembly

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Ambassador
Permanent Representative

* Reissued for technical reasons on 2 July 2013.
** A/68/50.

13-36208* (E) 020713

Please recycle

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United Nations A/68/94

General Assembly

Distr.: General
13 June 2013

Original: English

Sixty-eighth session
Item 83 of the preliminary list*
Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm

Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm

Compilation of decisions of international courts, tribunals and other bodies

Report of the Secretary-General

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* A/68/50.

13-36367 (E) 030713

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I. Introduction

1. The present report has been prepared pursuant to General Assembly resolution 65/28, in which the Assembly requested the Secretary-General to submit a compilation of decisions of international courts, tribunals and other bodies referring to the articles on prevention of transboundary harm from hazardous activities (annexed to resolution 62/68), and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities (annexed to resolution 61/36) adopted by the International Law Commission.

2. The Commission, in 2001, under the subtitle "Prevention of transboundary damage from hazardous activities" of the topic "International liability for injurious consequences arising out of acts not prohibited by international law", which was first included in its programme of work in 1978, completed and adopted a set of 19 draft articles on prevention and recommended to the Assembly the drafting of a convention on the basis of the draft articles. In resolution 56/82, the General Assembly expressed its appreciation for the valuable work done on the issue of prevention. Pursuant to a request contained in the same resolution, in 2002 the Commission resumed work on the liability aspects, under the subtitle "International liability in case of loss from transboundary harm arising out of hazardous activities". In 2006, the Commission completed and adopted a set of eight draft principles on the allocation of loss and recommended to the Assembly that it endorse the draft principles by a resolution and urge States to take national and international action to implement them.

3. In its resolution 61/36, the Assembly took note of the principles and commended them to the attention of Governments. In resolution 62/68, the Assembly commended the articles to the attention of Governments, without prejudice to any future action, as recommended by the Commission. It also commended the principles once more to the attention of Governments. Moreover, Governments were invited to submit comments on any future action, in particular on the form of the respective articles and principles, bearing in mind the recommendations made by the Commission in that regard, including in relation to the elaboration of a convention on the basis of the draft articles, as well as on any practice in relation to the application of the articles and principles. The report of the Secretary-General containing observations and comments submitted by Governments is contained in documents A/65/184 and Add.1. The General Assembly made similar commendations for the articles and the principles, respectively, in its resolution 65/28.

4. In a note verbale dated 19 January 2011, the Secretary-General drew the attention of Governments to resolution 65/28. By a note verbale dated 15 August 2012, the Secretary-General invited Governments to submit, by 31 January 2013, any information (including copies of decisions) regarding instances in which they had pleaded or relied upon the articles or principles before international courts, tribunals or other bodies. Submissions were received from the Netherlands and Qatar.

5. In preparing the present compilation, it is recalled that, in preparing the draft articles, the Commission kept in view the mandate given to the Commission to codify and develop international law, while, in developing the principles, it was recognized that they were general and residuary. The draft principles were cast as a

non-binding declaration, as it was felt that the goal of widespread acceptance of the substantive provisions was more likely to be met if the outcome was in that form. The focus of the Commission was on the formulation of the substance of the draft principles as a coherent set of standards of conduct and practice. It did not attempt to identify the current status of the various aspects of the draft principles in customary international law and the way in which the draft principles were formulated was not intended to affect that question.

6. The Secretariat has reviewed the case law of the various international courts, tribunals and other bodies and has identified only five decisions in which the draft articles were invoked. The present compilation has been prepared on the basis of those decisions of the International Court of Justice (2); the International Tribunal for the Law of the Sea (2); and the Permanent Court of Arbitration (1). In preparing the report, the Secretariat reviewed the official compilations of decisions, information provided on websites and secondary sources. The requested information referred to in paragraph 4 above did not yield any information on case law or pleadings. The Governments that responded typically indicated that they were not aware of any instances in which they had pleaded or relied upon the articles on prevention or the principles. However, as seen in some of the case law, paragraphs of which are reproduced in section II below, the draft articles — either generally or some of the provisions — were invoked by some States in litigation in which they were involved. The case law also includes examples of prior texts of the draft articles being cited before their eventual adoption by the Commission in 2001. The case law does not reveal any instances in which the principles were invoked.

7. The five cases identified by the Secretariat are outlined in section II. In some instances, the draft articles were invoked expressly, while in others their invocation was implicit in the substance addressed.

II. Extracts of decisions referring to the articles on prevention of transboundary harm from hazardous activities (annexed to resolution 62/68), and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities (annexed to resolution 61/36)

International Court of Justice

8. In the 1995 dissenting opinion in the *Request for an examination of the situation in accordance with paragraph 63 of the Court's judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) case, Order of 22 September 1995* before the International Court of Justice,[1] Judge Sir Geoffrey Palmer referred to the draft articles on prevention prior to their adoption by the International Law Commission.

9. In determining whether a prima facie case had been made out on the environmental facts to examine the 1974 judgment, in particular whether a change in the pertinent facts had increased the risk of nuclear contamination, the dissenting opinion made reference to draft article 2 (a) defining "risk of causing significant

[1] *I.C.J Reports 1995*, p. 288 at p. 381.

transboundary harm" of the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law to derive support for a test to determine the calculus of risk.[2] Judge Palmer said:

> 68. There are a number of factors to be weighed in deciding whether New Zealand satisfied the prima facie standard ... which would warrant a decision that the basis of the 1974 judgment had altered and should be examined. These factors are:
>
> - the ultrahazardous nature of nuclear explosions and the dangerous nature of the waste they produce;
> - the length of time that some of the nuclear materials remain hazardous which is measured in tens of thousands of years or longer;
> - the fragile nature of the atoll structure and the cumulative effect of a large number of nuclear explosions upon the structure;
> - the fact that atolls cannot be distinguished from the marine environment and must be thought of as an inherent part of the ocean ecosystem;
> - the high number of tests which have been concentrated within a small area;
> - the proximity of the testing to the marine environment;
> - the high quantities of dangerous nuclear wastes now accumulated on the test sites;
> - the risks of radiation entering the food chain through plankton, tuna and other fish;
> - the risks of further fissures and shearing off of part of the atoll structure occurring as the result of further testing.
>
> 69. It cannot be doubted that France has engaged in activities that have substantially altered the natural environment of the test sites in the Pacific. These actions have been intentional and they have been under scientific scrutiny, especially by French scientists. But the unintended repercussions of intentional human action are often the most important. The nature of the risks inherent in the activity itself would suggest caution to be appropriate. Some means of calculating those risks is necessary to arrive at a determination of whether New Zealand has satisfied the test. This calculus I suggest should contain a number of elements:
>
> - the magnitude of the recognizable risk of harm by nuclear contamination in the circumstances;
> - the probability of the risk coming to pass;
> - the utility and benefits of the conduct being assessed — viz. nuclear testing by France;
> - the cost of the measures needed to avert the risk.

[2] Upon final adoption of the draft articles on prevention by the Commission, the above definition and commentary thereto remained unaltered. See *Yearbook ... 2001*, vol. II (Part Two), pp. 151-153.

> 70. In my opinion what is required under the test the Court should apply is a risk-benefit analysis. There must be a balancing of the risks of the activity, the probability of harm, the utility of the activity and the measures needed to eliminate the risk. This is similar to a calculus of the risk analysis in the law of torts in some common law jurisdictions [references omitted]. But it is submitted that it is an appropriate analytical construct with some modifications for measuring the issue here.
>
> 71. The gravity of the radiation harm if it occurs is likely to be serious for the marine environment. The magnitude of the risk that the harm will occur must be regarded as significant given the destructive force of nuclear explosions and the possibility of other disturbances or abnormal situations occurring in the course of the long life of the dangerous substances. The costs of averting the risk in this instance are low — they consist of France providing a fully scientifically verifiable environment impact assessment in accordance with modern environmental practice which demonstrates that the proposed tests will not result in nuclear contamination. No doubt France and New Zealand would differ greatly on the utility of nuclear testing but it can reasonably be said that the extra tests proposed cannot have great value given the number that have preceded them. They are of diminishing marginal value, if they have any value at all. If the calculus of the risk analysis were applied in this way, then on these facts a prima facie case is made out by New Zealand in my opinion.
>
> 72. The test put forward here derives [some] support from the recent work of the International Law Commission where it laid down that for the purposes of draft articles under its consideration "risk of causing significant transboundary harm" an expression which refers "to the combined effect of the probability of occurrence of an accident and the magnitude of its injurious impact" (Report of the International Law Commission on the work of its forty-sixth session, 2 May-22 July 1994, *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10* (A/49/10), p. 400).

10. So as to clarify the standards to be applied to the dispute, the dissenting opinion also addressed how the state of international law relating to the environment in general and nuclear testing in particular had rapidly developed and progressed between 1974 and 1995. In the main, Judge Palmer sought to establish, inter alia, that international environmental law had developed rapidly and was tending to develop in a way that provided comprehensive protection for the natural environment; that it had taken an increasingly restrictive approach to the regulation of nuclear radiation; and that customary international law may have developed a norm of requiring environmental impact assessment where activities may have a significant effect on the environment. Taken together, the legal developments were sufficient to meet a prima facie test that the legal circumstances had altered sufficiently to favour an examination of the 1974 case.

11. In this regard, the work of the International Law Commission on the draft articles on prevention was first referred to more generally, as part of a review of developments in the drafting of conventions and in the case law, as follows:

> 81. But authoritative decisions in the area of international environment law are scarce enough. They certainly lag behind the plethora of conventional law that has sprung into existence in the more than 20 years spanning the life of

this case. The nature of some of the issues is helpfully discussed in the Report of the International Law Commission on the work of its forty-sixth session, 2 May-22 July 1994, on "International Liability for Injurious Consequences Arising out of Acts Not Prohibited by International Law" (*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10* (A/49/10), pp. 367 ff.), a subject with which the Commission has been grappling since 1978 without definitive result. The Commission is giving priority in its work to prevention of activities having a risk of causing transboundary harm.

12. Secondly, the dissenting opinion referred to the draft articles with specific regard to international law concerning radioactive hazards, in particular the emerging international law on environmental impact assessment and its application to the facts of the case:

> 87. At this point, Mr. D. J. MacKay for New Zealand went on to develop this segment of the argument by pointing to the application of the emerging international law on environmental impact assessment (EIA) and the precautionary principle in their application to the facts of this case. In both respects the law had changed dramatically, thus supporting the view that the basis of the Court's Judgment was affected. It was submitted that other parties likely to be affected by the risks have a right to know what the investigations for the EIA are, have a right to propose additional investigations and a right to verify for themselves the result of such investigations. As the law now stands it is a matter of legal duty to first establish before undertaking an activity that the activity does not involve any unacceptable risk to the environment. An EIA is simply a means of establishing a process to comply with that international legal duty. New Zealand pointed to a number of international instruments, including Article 205 of the United Nations Law of the Sea Convention that make explicit reference to EIA.
>
> 88. Under Article 12 that has been adopted by the International Law Commission in the course of its deliberations, the Commission has decided that before a State carries out activities which involve a risk of causing significant transboundary harm through their physical consequences
>
> > "a State shall ensure that an assessment is undertaken of the risk of such activity. Such an assessment shall include an evaluation of the possible impact of that activity on persons or property as well as in the environment of other States."[3]
>
> The Noumea Convention referred to earlier also contains an explicit obligation in Article 16 to conduct environmental impact assessments before embarking upon any major project which might affect the marine environment. A more explicit measure appears in Article 12 of that Convention producing a duty to prevent, reduce and control pollution in the Convention area which might result from the testing of nuclear devices.

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[3] *Draft Article 12. Risk assessment (as provisionally adopted by the International Law Commission at its forty-sixth session)*:
Before taking a decision to authorize an activity referred to in article 1, a State shall ensure that an assessment is undertaken of the risk of such activity. Such an assessment shall include an evaluation of the possible impact of that activity on persons or property as well as in the environment of other States. See *Yearbook ... 1994*, vol. II (Part Two), p. 166.

13. In the draft articles on prevention adopted on second reading, draft article 12 on risk assessment, as amended, eventually became draft article 7 and read as follows:

> **Article 7**
> **Assessment of risk**
>
> Any decision in respect of the authorization of an activity within the scope of the present articles shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment.

14. The question of the scope and content of an environmental impact assessment was also the subject of consideration by the International Court of Justice in 2010 in the *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* judgment.[4] The *Pulp Mills* case concerned a dispute between Argentina and Uruguay regarding alleged breaches by Uruguay of obligations incumbent upon it under the Statute of the River Uruguay, a treaty signed by Argentina and Uruguay on 26 February 1975. The Court, inter alia, addressed the relationship between the need for an environmental impact assessment, where the planned activity was liable to cause harm to a shared resource and transboundary harm, and the obligations of the Parties under article 41 *(a)* and *(b)* of the 1975 Statute. The parties to the dispute disagreed on the scope and content of the environmental impact assessment and the draft articles on prevention were invoked to justify the limited scope of an environmental impact assessment in international law as not intended to assess remote or purely speculative risks:

> 203. ... The Parties agree on the necessity of conducting an environmental impact assessment. Argentina maintains that the obligations under the 1975 Statute viewed together impose an obligation to conduct an environmental impact assessment prior to authorizing Botnia to construct the plant. Uruguay also accepts that it is under such an obligation. The Parties disagree, however, with regard to the scope and content of the environmental impact assessment that Uruguay should have carried out with respect to the Orion (Botnia) mill project. Argentina maintains in the first place that Uruguay failed to ensure that "full environmental assessments [had been] produced, prior to its decision to authorize the construction ..."; and in the second place that "Uruguay's decisions [were] ... based on unsatisfactory environmental assessments", in particular because Uruguay failed to take account of all potential impacts from the mill, even though international law and practice require it, and refers in this context to the 1991 Convention on Environmental Impact Assessment in a Transboundary Context of the United Nations Economic Commission for Europe (hereinafter the "Espoo Convention") (*UNTS*, Vol. 1989, p. 309), and the 1987 Goals and Principles of Environmental Impact Assessment of the United Nations Environment Programme (hereinafter the "UNEP Goals and Principles") (*UNEP/WG.152/4 Annex (1987)*), document adopted by UNEP Governing Council at its 14th Session (Dec. 14/25 (1987)). Uruguay accepts that, in accordance with international practice, an environmental impact assessment of the Orion (Botnia) mill was necessary, but argues that international law does not impose any conditions upon the content of such an

[4] *I.C.J. Reports 2010*, p. 14.

assessment, the preparation of which being a national, not international, procedure, at least where the project in question is not one common to several States. According to Uruguay, the only requirements international law imposes on it are that there must be assessments of the project's potential harmful transboundary effects on people, property and the environment of other States, as required by State practice and the International Law Commission 2001 draft Articles on Prevention of Transboundary Harm from Hazardous Activities, without there being any need to assess remote or purely speculative risks.

204. It is the opinion of the Court that in order for the Parties properly to comply with their obligations under Article 41 *(a)* and *(b)* of the 1975 Statute, they must, for the purposes of protecting and preserving the aquatic environment with respect to activities which may be liable to cause transboundary harm, carry out an environmental impact assessment. As the Court has observed in the case concerning the *Dispute Regarding Navigational and Related Rights*,

> "there are situations in which the parties' intent upon conclusion of the treaty was, or may be presumed to have been, to give the terms used — or some of them — a meaning or content capable of evolving, not one fixed once and for all, so as to make allowance for, among other things, developments in international law" (*Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua), judgment, I.C.J. Reports 2009*, p. 242, para. 64).

In this sense, the obligation to protect and preserve, under Article 41 *(a)* of the Statute, has to be interpreted in accordance with a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource. Moreover, due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if a party planning works liable to affect the régime of the river or the quality of its waters did not undertake an environmental impact assessment on the potential effects of such works.

205. The Court observes that neither the 1975 Statute nor general international law specify the scope and content of an environmental impact assessment. It points out moreover that Argentina and Uruguay are not parties to the Espoo Convention. Finally, the Court notes that the other instrument to which Argentina refers in support of its arguments, namely, the UNEP Goals and Principles, is not binding on the Parties, but, as guidelines issued by an international technical body, has to be taken into account by each Party in accordance with Article 41 *(a)* in adopting measures within its domestic regulatory framework. Moreover, this instrument provides only that the "environmental effects in an EIA should be assessed with a degree of detail commensurate with their likely environmental significance" (Principle 5) without giving any indication of minimum core components of the assessment. Consequently, it is the view of the Court that it is for each State to determine in its domestic legislation or in the authorization process for the project, the specific content of the environmental impact assessment required in each case,

having regard to the nature and magnitude of the proposed development and its likely adverse impact on the environment as well as to the need to exercise due diligence in conducting such an assessment. The Court also considers that an environmental impact assessment must be conducted prior to the implementation of a project. Moreover, once operations have started and, where necessary, throughout the life of the project, continuous monitoring of its effects on the environment shall be undertaken.

15. The Court also considered the role of the environmental impact assessment in the fulfilment of the substantive obligations of the Parties, in particular whether the populations likely to be affected, namely both the Uruguayan and Argentine riparian populations, should have, or had in fact, been consulted in the context of the environmental impact assessment:

215. The Parties disagree on the extent to which the populations likely to be affected by the construction of the Orion (Botnia) mill, particularly on the Argentine side of the river, were consulted in the course of the environmental impact assessment. While both Parties agree that consultation of the affected populations should form part of an environmental impact assessment, Argentina asserts that international law imposes specific obligations on States in this regard. In support of this argument, Argentina points to Articles 2.6 and 3.8 of the Espoo Convention, Article 13 of the 2001 International Law Commission draft Articles on Prevention of Transboundary Harm from Hazardous Activities,[5] and Principles 7 and 8 of the UNEP Goals and Principles. Uruguay considers that the provisions invoked by Argentina cannot serve as a legal basis for an obligation to consult the affected populations and adds that in any event the affected populations had indeed been consulted.

216. The Court is of the view that no legal obligation to consult the affected populations arises for the Parties from the instruments invoked by Argentina.

217. Regarding the facts, the Court notes that both before and after the granting of the initial environmental authorization, Uruguay did undertake activities aimed at consulting the affected populations, both on the Argentine and the Uruguayan sides of the river ... [The Court cited some examples of activities that were carried out]

219. In the light of the above, the Court finds that consultation by Uruguay of the affected populations did indeed take place.

16. The Court had earlier dealt with the alleged violations of procedural obligations, including the obligations of the parties following the end of the negotiating period. In that regard, one of the parties invoked the residual character of the draft articles as reflective of customary international law. The Court interpreted the obligations as follows:

151. Article 12 refers the Parties, should they fail to reach an agreement within 180 days, to the procedure indicated in Chapter XV.

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[5] *Article 13 (Information to the public)*:

States concerned shall, by such means as are appropriate, provide the public likely to be affected by an activity within the scope of the present articles with relevant information relating to that activity, the risk involved and the harm which might result and ascertain their views.

Chapter XV contains a single article, Article 60, according to which:

> "Any dispute concerning the interpretation or application of the Treaty and the Statute which cannot be settled by direct negotiations may be submitted by either party to the International Court of Justice.
>
> In the cases referred to in Articles 58 and 59, either party may submit any dispute concerning the interpretation or application of the Treaty and the Statute to the International Court of Justice, when it has not been possible to settle the dispute within 180 days following the notification referred to in Article 59."

152. According to Uruguay, the 1975 Statute does not give one party a "right of veto" over the projects initiated by the other. It does not consider there to be a "no construction obligation" borne by the State initiating the projects until such time as the Court has ruled on the dispute. Uruguay points out that the existence of such an obligation would enable one party to block a project that was essential for the sustainable development of the other, something that would be incompatible with the "optimum and rational utilization of the [r]iver". On the contrary, for Uruguay, in the absence of any specific provision in the 1975 Statute, reference should be made to general international law, as reflected in the 2001 draft Articles of the International Law Commission on Prevention of Transboundary Harm from Hazardous Activities (*Yearbook of the International Law Commission*, 2001, vol. II, Part Two); in particular, draft Article 9, paragraph 3, concerning "Consultations on preventive measures", states that "[i]f the consultations ... fail to produce an agreed solution, the State of origin shall nevertheless take into account the interests of the State likely to be affected in case it decides to authorize the activity to be pursued ...".

153. Argentina, on the other hand, maintains that Article 12 of the 1975 Statute makes the Court the final decision-maker where the parties have failed to reach agreement within 180 days following the notification referred to in Article 11. It is said to follow from Article 9 of the Statute, interpreted in the light of Articles 11 and 12 and taking account of its object and purpose, that if the notified party raises an objection, the other party may neither carry out nor authorize the work in question until the procedure laid down in Articles 7 to 12 has been completed and the Court has ruled on the project. Argentina therefore considers that, during the dispute settlement proceedings before the Court, the State which is envisaging carrying out the work cannot confront the other Party with the fait accompli of having carried it out.

Argentina argues that the question of the "veto" raised by Uruguay is inappropriate, since neither of the parties can impose its position in respect of the construction works and it will ultimately be for the Court to settle the dispute, if the parties disagree, by a decision that will have the force of *res judicata*. It could be said, according to Argentina, that Uruguay has no choice but to come to an agreement with it or to await the settlement of the dispute. Argentina contends that, by pursuing the construction and commissioning of the Orion (Botnia) mill and port, Uruguay has committed a continuing violation of the procedural obligations under Chapter II of the 1975 Statute.

154. The Court observes that the "no construction obligation", said to be borne by Uruguay between the end of the negotiation period and the decision of the Court, is not expressly laid down by the 1975 Statute and does not follow from its provisions. Article 9 only provides for such an obligation during the performance of the procedure laid down in Articles 7 to 12 of the Statute.

Furthermore, in the event of disagreement between the parties on the planned activity persisting at the end of the negotiation period, the Statute does not provide for the Court, to which the matter would be submitted by the State concerned, according to Argentina, to decide whether or not to authorize the activity in question. The Court points out that, while the 1975 Statute gives it jurisdiction to settle any dispute concerning its interpretation or application, it does not however confer on it the role of deciding in the last resort whether or not to authorize the planned activities. Consequently, the State initiating the plan may, at the end of the negotiation period, proceed with construction at its own risk.

The Court cannot uphold the interpretation of Article 9 according to which any construction is prohibited until the Court has given its ruling pursuant to Articles 12 and 60.

155. Article 12 does not impose an obligation on the parties to submit a matter to the Court, but gives them the possibility of doing so, following the end of the negotiation period. Consequently, Article 12 can do nothing to alter the rights and obligations of the party concerned as long as the Court has not ruled finally on them. The Court considers that those rights include that of implementing the project, on the sole responsibility of that party, since the period for negotiation has expired.

156. In its Order of 13 July 2006, the Court took the view that the "construction [of the mills] at the current site cannot be deemed to create a fait accompli" (*Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006*, p. 133, para. 78). Thus, in pronouncing on the merits in the dispute between the Parties, the Court is the ultimate guarantor of their compliance with the 1975 Statute.

157. The Court concludes from the above that Uruguay did not bear any "no construction obligation" after the negotiation period provided for in Article 12 expired on 3 February 2006, the Parties having determined at that date that the negotiations undertaken within the GTAN had failed (see paragraph 40). Consequently the wrongful conduct of Uruguay (established in paragraph 149 above) could not extend beyond that period.

17. In addressing substantive matters concerning obligations to coordinate measures to avoid changes in the ecological balance and to prevent pollution and preserve the aquatic environment arising under articles 36 and 41 of the 1975 Statute, the Court, as part of general remarks on the normative content of those articles, implicitly alluded to the nature of the obligation of due diligence contained in the draft articles on prevention. It stated:

183. It is recalled that Article 36 provides that "[t]he parties shall coordinate, through the Commission, the necessary measures to avoid any change in the

ecological balance and to control pests and other harmful factors in the river and the areas affected by it".

184. It is the opinion of the Court that compliance with this obligation cannot be expected to come through the individual action of either Party, acting on its own. Its implementation requires co-ordination through the Commission ...

...

186. The Parties also disagree with respect to the nature of the obligation laid down in Article 36, and in particular whether it is an obligation of conduct or of result. Argentina submits that, on a plain meaning, both Articles 36 and 41 of the 1975 Statute establish an obligation of result.

187. The Court considers that the obligation laid down in Article 36 is addressed to both Parties and prescribes the specific conduct of coordinating the necessary measures through the Commission to avoid changes to the ecological balance. An obligation to adopt regulatory or administrative measures either individually or jointly and to enforce them is an obligation of conduct. Both Parties are therefore called upon, under Article 36, to exercise due diligence in acting through the Commission for the necessary measures to preserve the ecological balance of the river.

...

197. ... [T]he obligation to "preserve the aquatic environment, and in particular to prevent pollution by prescribing appropriate rules and measures" is an obligation to act with due diligence in respect of all activities which take place under the jurisdiction and control of each party. It is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators, to safeguard the rights of the other party. The responsibility of a party to the 1975 Statute would therefore be engaged if it was shown that it had failed to act diligently and thus take all appropriate measures to enforce its relevant regulations on a public or private operator under its jurisdiction.

International Tribunal for the Law of the Sea

18. The nature and scope of the obligation of due diligence was a subject of further elucidation in the Advisory opinion of 1 February 2011 on the *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*. The Seabed Disputes Chamber of the International Tribunal for the Law of the Sea was in that instance requested, inter alia, to opine on the legal responsibilities and obligations of States Parties to the United Nations Convention on the Law of the Sea with respect to the sponsorship of activities in the Area in accordance with the Convention, in particular Part XI, and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The Chamber identified the key provisions concerning the obligations of the sponsoring States to be article 139, paragraph 1; article 153, paragraph 4 (especially the last sentence); and annex III, article 4, paragraph 4, of the Convention (especially the first sentence), noting that the central

issue to the question posed concerned the meaning of the expression "responsibility to ensure" in article 139, paragraph 1, and annex III, article 4, paragraph 4, of the Convention. In its analysis, which entailed the invocation of the draft articles, it stated as follows:

> 108. "Responsibility to ensure" points to an obligation of the sponsoring State under international law. It establishes a mechanism through which the rules of the Convention concerning activities in the Area, although being treaty law and thus binding only on the subjects of international law that have accepted them, become effective for sponsored contractors which find their legal basis in domestic law. This mechanism consists in the creation of obligations which States Parties must fulfil by exercising their power over entities of their nationality and under their control.
>
> ...
>
> 110. The sponsoring State's obligation "to ensure" is not an obligation to achieve, in each and every case, the result that the sponsored contractor complies with the aforementioned obligations. Rather, it is an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result. To utilize the terminology current in international law, this obligation may be characterized as an obligation "of conduct" and not "of result", and as an obligation of "due diligence".
>
> 111. The notions of obligations "of due diligence" and obligations "of conduct" are connected. This emerges clearly from the Judgment of the ICJ in the *Pulp Mills on the River Uruguay*: "An obligation to adopt regulatory or administrative measures ... and to enforce them is an obligation of conduct. Both parties are therefore called upon, under article 36 [of the Statute of the River Uruguay], to exercise due diligence in acting through the [Uruguay River] Commission for the necessary measures to preserve the ecological balance of the river" (paragraph 187 of the Judgment).
>
> 112. The expression "to ensure" is often used in international legal instruments to refer to obligations in respect of which, while it is not considered reasonable to make a State liable for each and every violation committed by persons under its jurisdiction, it is equally not considered satisfactory to rely on mere application of the principle that the conduct of private persons or entities is not attributable to the State under international law (see ILC Articles on State Responsibility, Commentary to article 8, paragraph 1).

19. To further elucidate the meaning of the expression "to ensure", the Chamber cited examples found in article 194, paragraph 2, and article 139 of the Convention. In addition, the Chamber observed that:

> 115. In its Judgment in the *Pulp Mills on the River Uruguay* case, the ICJ illustrates the meaning of a specific treaty obligation that it had qualified as "an obligation to act with due diligence" as follows:
>
> > It is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private

> operators, such as the monitoring of activities undertaken by such operators ... (paragraph 197)

116. Similar indications are given by the International Law Commission in its Commentary to article 3 of its Articles on Prevention of Transboundary Harm from Hazardous Activities, adopted in 2001. According to article 3, the State of origin of the activities involving a risk of causing transboundary harm "shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof". The Commentary states:

> The obligation of the State of origin to take preventive or minimization measures is one of due diligence. It is the conduct of the State of origin that will determine whether the State has complied with its obligation under the present articles. The duty of due diligence involved, however, is not intended to guarantee that significant harm be totally prevented, if it is not possible to do so. In that eventuality, the State of origin is required ... to exert its best possible efforts to minimize the risk. In this sense, it does not guarantee that the harm would not occur. (Paragraph 7)

117. The content of "due diligence" obligations may not easily be described in precise terms. Among the factors that make such a description difficult is the fact that "due diligence" is a variable concept. It may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge. It may also change in relation to the risks involved in the activity ...

20. In his separate opinion in the *Proceedings Concerning the Mox Plant (Ireland v. United Kingdom)*, order of 3 December 2001, Judge Anderson, while concurring fully with the reasoning of the Tribunal on the main substantive issues, found that the order did not go not far enough in its findings regarding the preservation of rights and the prevention of serious harm to the marine environment. Draft articles 1 and 3 of the Draft Articles on Prevention were cited by the Judge, without further elucidation, in advancing the proposition that the Order of the Tribunal could have gone further and reached conclusions upon the questions of preserving rights claimed by the Applicant and of "serious harm to the marine environment", within the meaning of article 290, paragraph 5, of the United Nations Convention on the Law of the Sea. He stated in pertinent part:

> In its principal submission, the Applicant sought the equivalent of an injunction restraining *pendente lite* the Respondent from allowing the MOX plant to commence operations and production on 20 December 2001 — a request which the Tribunal clearly did not accept. It is common ground that the plant is situated on the territory of the United Kingdom and thus under the sovereignty of the United Kingdom. In the terms of the draft articles on Prevention of Transboundary Harm from Hazardous Activities recently adopted by the International Law Commission, the plant will conduct "activities not prohibited by international law". In the terms of the Convention on the Law of the Sea, the plant falls to be considered in the context of article 193, which reads:

States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.

The operation of the plant involves a dry process, but, as an indirect result of normal cleaning work, it is expected to result in the introduction of some very small amounts of liquid and gaseous substances and energy into the marine environment of the Irish Sea by two pathways: first, via an outfall structure, within the meaning of article 207, and secondly via the atmosphere, to which article 212 applies.

The question before the Tribunal was whether there would be irreparable harm to any of the rights claimed by the Applicant under articles 123, 192 to 194, 197, 206, 207, 211, 212 and 213 arising from alleged breaches of its duties under those articles by the Respondent. These rights were categorised, in broad terms, as the right to ensure that the Irish Sea will not be subject to additional radioactive pollution; procedural rights to have the Respondent prepare proper environmental impact statements; and the right to cooperation and coordination over the protection of the Irish Sea as a semi-enclosed sea.

Tribunal constituted through the Permanent Court of Arbitration

21. In his declaration in the *Dispute Concerning Access to Information Under Article 9 of the OSPAR Convention between Ireland and the United Kingdom of Great Britain and Northern Ireland, Final Award, Decision of 2 July 2003*, Professor W. Michael Reisman, in deciding not to concur in the majority's interpretation of article 9(1) of the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic ("the OSPAR Convention"), inter alia, cited draft article 5 of the articles on prevention and its accompanying commentary. He stated in relevant part:

> 6. ... The words "ensure that their competent authorities are required to," which Ireland's submission would require the Tribunal to ignore, make Article 9(1) an obligation to adjust domestic law in a prescribed way by providing for certain institutional recourses, for which specific criteria are provided. Article 9(1) is not expressed in terms to establish an obligation on the international plane to provide information, with the performance of mat obligation in specific cases to be subject to the jurisdiction of a Tribunal established under Article 32.
>
> 7. This plain reading of Article 9(1) appears both to reflect its objects and purposes and to produce a reasonable and economic means for implementing Article 9(2) and (3) obligations ...
>
> ...
>
> 12. The result of the interpretation of Article 9 that I believe is required is consistent with a not uncommon treaty practice in which states are obliged to make adjustments in domestic law and, to the extent that they do so appropriately, they have fulfilled their treaty obligations. The International Law Commission ("ILC") has had occasion to review this practice in the course of its work on International Liability for injurious consequences arising

out of acts not prohibited by international law. Article 5 of the ILC draft on this subject provides:

> States concerned shall take the necessary legislative, administrative or other action including the establishment of suitable monitoring mechanisms to implement the provisions of the present articles.

13. In the third paragraph of its Commentary to this provision, the ILC said:

> To say that States must take the necessary measures does not mean that they must themselves get involved in operational issues relating to the activities to which article 1 applies. *Where these activities are conducted by private persons or enterprises, the obligation of the State is limited to establishing the appropriate regulatory framework and applying it in accordance with those articles. The application of that regulatory framework in the given case will then be a matter of ordinary administration or, in the case of disputes, for the relevant courts of tribunals*, aided by the principle of non-discrimination contained in article 15 (italics in original).